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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/487,000 | 03/07/2000 | ULRICH BROCKEL | 48320 | 7044 |

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KEIL & WEINKAUF
1350 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

EXAMINER

PRATT, HELEN F

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

18

DATE MAILED: 02/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/487,000

Applicant(s)

BROCKEL ET AL

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-2, 4-19, 21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification states that C1-C8 carboxylic acids can be used (page 19 of amendment B, 1st line of complete para. 2). Sorbic acid is a C-6 carboxylic acid. Support for this statement is found in US PATENT prepublication 2002/0169149 A1, lists it with carboxylic acids (page 9, claim 13.) Then as in claim 1, the use of sorbic acid is excluded because the carboxylic acid is one that becomes liquid at a temperature of 40 C or below, while as stated in the last amendment, sorbic acid is solid at 135 C. Therefore, it is seen that the specification does not enable the use of C1-8 carboxylic acids because sorbic acid is not liquid at the claimed temperatures.

Specification

The disclosure is objected to because of the following informalities: in the new specification found with amendment B, it is noted that numerous temperatures have a "5" added to them, as on page 19, 1st para. "405 C". or below, page 18, '234C for room temperature, and on.

Also, the disclosure is objected to as the numbering on the specification starts with page 15, instead of 1 as in the original specification. This will cause confusion for the printer.

Appropriate correction is required.

CLAIMS

Claim 20 has not been cancelled as a non-elected claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-19, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Ooijen (GB 0608975 A) or Gonthier et al. or Kotani et al.

The claims are rejected for the reasons of record and for these further reasons. Kotani et al. disclose an impregnated salt of the size of more than 150 microns (col. 3, lines 1-14). The salt is seen to have been impregnated because it is made by adding potassium sorbate to the sorbic acid (col. 2, lines 55-58). Even though sorbic acid is not listed as one of the claimed acids, no reason has been given for its exclusion. Sorbic acid is also an acid used in food preparation, and is considered equivalent to certainly the claimed acids because the specification discloses that carboxylic acids with chain lengths from 1-8 can be used. Therefore, it would have been obvious to substitute

other acids for the sorbic acid to make the claimed composition in the size disclosed by Kotani et al.

ARGUMENTS

Applicant's arguments filed 12-17-02 have been fully considered but they are not persuasive. Applicants argue that in van Ooijen no reference is made to the size of the salt particles. However, nothing is seen in the specification as to the criticality of the size of the particles. Applicants argue that the solutions of Gonthier are not solidified. This is not seen as the compositions are made of acids and salts and no amounts of either are seen in the claims to exclude the reference ((col. 1, lines 43-55).

Applicants argue that in Kotani, sorbic acid is not a required acid. However, it is considered to be equivalent to the other carboxylic acids C1 to C8 as the specification states that any of these can be used in the invention (page 19 of amendment B, 1st line of complete para. 2).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday, Wednesday and Friday from 9:30 to 6:00 and Tues and Thurs. from 4:30 to 10 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 3959. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7718.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

Hp 1-29-03


HELEN PRATT
PRIMARY EXAMINER